Filed 4/20/17 In re Cruz R. CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re CRUZ R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. CRUZ R., Defendant and Appellant.	F073755 (Super. Ct. No. JW135986-00) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. William D. Palmer, Judge.

Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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[*]Before Gomes, Acting P.J., Peña, J. and Smith, J.

INTRODUCTION

Following a contested hearing, the Kern County Juvenile Court found proven allegations of attempted extortion (Pen. Code,[1] § 524) and disorderly conduct (§ 647, subd. (j)(3)(A)) against then 16-year-old Cruz R. The court declared Cruz a ward of the court, placed him on probation not to extend past his 21st birthday, and committed him to the custody of Camp Erwin Owen for three years two months. (Welf. & Inst. Code, §§ 602, 725, subd. (b).)

On appeal, Cruz challenges a probation condition barring him from using, accessing, viewing, or participating in any social networking websites. He contends the condition is unconstitutionally vague because the court did not define the term "social networking site" and because the condition does not contain an express knowledge requirement; it is unconstitutionally overbroad because the court did not narrowly tailor the condition to its purpose; and the condition is unreasonable because it has no relationship to the deterrence of future criminal activity. We affirm.

FACTUAL AND PROCEDURAL HISTORY

On February 27, 2016, Angelina G. hosted her younger half brother, Cruz, at her home. Cruz asked if he could use his PlayStation in Angelina's bedroom. Angelina said no. Later that day, Angelina began to take a shower. She noticed the door to her bathroom open slightly, but assumed it was her two-year-old son. Then, she saw Cruz's face through the crack in the doorway. She yelled at him to get out.

The following day, Angelina received a text message from an unknown number. The message told Angelina to "send me at this time [nude] pictures or I will send a nude video of you to your co-workers and boss." Angelina did not respond. Later that day, Angelina received a second message threatening, "if [she] didn't send [nude] pictures that

[1] All further undefined statutory citations are to the Penal Code unless otherwise indicated.

[her] daughter may find herself in an accident on the way to work." At that time, Angelina's daughter was on her way to work. Angelina did not respond.

After Angelina returned home, she received a third message wherein the sender noted she had returned home. Angelina responded, but wrote nothing in the message. She noticed Cruz was holding his phone and she saw his phone light up. Angelina then received a fourth message, in which the sender told her that her blank message "[was] not good enough." Angelina and her father took Cruz's phone away from him. Angelina sent a message from her phone to the sender of the text messages. About a minute later, Cruz's phone indicated it had received a message. Angelina repeated the experiment in front of her stepmother. Cruz left the house.

A few days later, Angelina found two videos saved on Cruz's phone. The first video showed Angelina in her shower, behind the curtain. The second video, shot from the bathroom windowsill, showed Cruz positioning the camera, and showed Angelina's head and shoulders after she got out of the shower.

On March 22, 2016, Angelina showed the videos to Kern County Sheriff's Deputy Jose Perez. With the participation of Perez, Angelina called Cruz. Cruz said he had taken the videos and threatened Angelina because she had angered him by not allowing him to use his PlayStation in her bedroom. Cruz said he would not have hurt Angelina's daughter and claimed he had not sent the videos to anyone.

On April 5, 2016, Perez interviewed Cruz. Cruz admitted filming Angelina and sending the text messages that Angelina had received. Cruz had concealed his identity in the texts by using an application that misrepresented the phone number of the sender. During the interview, Cruz admitted he had taken videos of Angelina in the shower because he wanted to see her naked.

DISCUSSION

Cruz challenges the constitutionality of the probation condition prohibiting him from using, accessing, viewing, or participating in any social networking site. He claims

the condition is vague, overbroad, and it is not reasonably related to the deterrence of future criminal activity. We conclude Cruz's claims are without merit.

A. The Social Networking Website Ban Is Sufficiently Specific

Cruz initially contends the social networking probation condition is unconstitutionally vague because it is not reasonably specific and it lacks an express knowledge requirement. We disagree.

1. Forfeiture

The Attorney General contends Cruz's claim is forfeited because he did not object to the challenged probation condition in the juvenile court below. A Court of Appeal may review the constitutionality of a probation condition, even when the condition has not been challenged in the lower court, if the question can be resolved as a matter of law without reference to the sentencing record. (*In re Sheena K.* (2007) 40 Cal.4th 875, 888–889 (*Sheena K.*).) Because Cruz's vagueness challenge raises a pure question of law and may be resolved without reference to the sentencing record, he is not foreclosed from raising his claim on appeal.

2. Analysis

a. The Condition Is Reasonably Specific

"[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning.' [Citation.] The rule of fair warning consists of 'the due process concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders' [citation], protections that are 'embodied in the due process clauses of the federal and California Constitutions.'" (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) As such, a probation condition must be "'sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.'" (*Ibid.*) Our examination of a challenged condition is further "guided by the principles that 'abstract legal commands must be applied in a specific *context*,' and that, although

not admitting of 'mathematical certainty,' the language used must have '"*reasonable* specificity."'" (*Ibid.*)

Here, the term "social networking website" has a plain commonsense meaning that renders it capable of being defined with reasonable specificity. According to the Oxford English Dictionary, "social media" includes "websites and applications which enable users to create and share content or to participate in social networking." (Oxford English Dict. Online (2017) < http://www.oed.com> [as of Apr. 20, 2017].) Further, "social networking" is defined as "the use or establishment of social networks or connections; (now *esp*.) the use of websites which enable users to interact with one another, find and contact people with common interests, etc." (*Ibid*.) Finally, a "social network" is defined as "a system of social interactions and relationships; a group of people who are socially connected to one another; (now also) a social networking website; the users of such a website collectively." (*Ibid*.)

A probation condition is sufficiently specific "'"if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources."'" (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630.) Because definition of the term "social networking website" can be ascertained by reference to readily available sources, we reject Cruz's assertion the term cannot be defined with reasonable specificity.

Cruz contends that although the term "social media" has been defined in the Labor Code (Lab. Code, § 980, subd. (a)) and the Education Code (Ed. Code, § 99120), this does not cure the vagueness of the term "social networking site." In finding the term "social media website" reasonably specific, we do not rely on the Education Code's and Labor Code's definitions of the term "social media."

The term "social media" pursuant to Labor Code section 980 is defined as follows: "*As used in this chapter*, 'social media' means an electronic service or account, or electronic content, including, but not limited to, videos, still photographs, blogs, video

blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations." (*Id.*, at subd. (a), italics added.) Education Code section 99120 employs a similar definition of the term "social media" and also limits application of its definition to a particular chapter of the Education Code: "*As used in this chapter*, 'social media' means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations." (*Ibid*., italics added.) Applying these definitions to Cruz's probation condition would restrict him from much more than using, accessing, viewing, or participating in social networking websites. For example, these definitions would arguably prohibit him from participating in online classes. This could not have been what the juvenile court intended given the nature of Cruz's offenses.

Cruz asserts some websites, such as Google+, WordPress, Tumblr, and various Blogger platforms, cannot be excluded as social networking websites with a reasonable degree of certainty. As such, he contends this shows the term is vague. We disagree.

Some websites, such as LinkedIn, Facebook, Tumblr, and Google+, clearly fall within the definition of a social networking website. In contrast, e-mail or text messaging applications, such as Gmail, may have social components but are not generally considered to be social networking websites. While other websites may not be so easily categorized, we emphasize "the mere fact that close cases can be envisioned" does not "render[] a statute vague." (*United States v. Williams* (2008) 553 U.S. 285, 305–306.) "Close cases can be imagined under virtually any statute." (*Id*. at p. 306.)

Cruz further contends two cases—*Doe v. Jindal* (M.D.La. 2012) 853 F.Supp.2d 596 (*Jindal*) and *Doe v. Nebraska* (D.Neb. 2012) 898 F.Supp.2d 1086—demonstrate the term "social networking site" is vague. Cruz's reliance on *Jindal* and *Nebraska* is misplaced.

In *Jindal, supra,* 853 F.Supp.2d 596, a Louisiana statute prohibited registered sex offenders from "'using or accessing … social networking websites, chat rooms, and peer-to-peer networks.'" (*Id*. at p. 599.) A first time violation of the statute was punishable by a fine of up to $10,000 and imprisonment for up to 10 years. (*Id*. at p. 600.) The statute defined a "social networking website" as "an Internet website that has any of the following capabilities: [¶] (a) Allows users to create web pages or profiles about themselves that are available to the general public or to any other users. [¶] (b) Offers a mechanism for communication among users, such as a forum, chat room, electronic mail, or instant messaging." (*Ibid*.) The federal district court held the statute was unconstitutionally vague because it did not sufficiently clarify which websites are prohibited. (*Id.* at p. 606.) Although the statute contained definitions of selected phrases, the court held such definitions were not sufficiently defined given the criminal sanctions imposed. (*Ibid*.)

Jindal is nonbinding on this court. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 925 ["Even on constitutional issues, we are not bound by federal circuit court decisions"].) Insofar as it may be considered as persuasive authority, we note *Jindal* involved a criminal statute, not a probation condition applied to a juvenile. Under Penal Code section 1203.1, when a person is placed on probation, the trial court has broad discretion to impose "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer …." (*Id.*, at subd. (j); see *People v. Olguin* (2008) 45 Cal.4th 375, 379.) Provided a given probation condition serves these purposes, it may permissibly "impinge upon a constitutional right otherwise enjoyed by the probationer, who is 'not entitled to the same degree of constitutional protection as other citizens.'" (*People v. Lopez, supra,* 66 Cal.App.4th at p. 624.)

Further, "courts have broader discretion in formulating conditions of probation for minors in order to guide them away from crime and violence." (*In re Victor L.*, *supra*, 182 Cal.App.4th at p. 925.) Because juvenile probation is a form of rehabilitation, it is not an act of leniency in lieu of punishment. (*Sheena K.*, *supra*, 40 Cal.4th at p. 889.) In contrast to an adult offender, "'[N]o choice is given to the youthful offender [to accept probation].'" (*Ibid*.) Thus, "'a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.'" (*Ibid*.) Consequently, Cruz's reliance on *Jindal*, which considered a challenge to a criminal statute banning the use of social networking websites, *chat rooms*, and *peer-to-peer networks*, is inapposite.

Cruz's reliance on *Doe v. Nebraska*, *supra*, 898 F.Supp.2d 1086 is similarly unpersuasive. *Doe v. Nebraska* involved several criminal statutes, one of which prohibited sex offenders from "'knowingly and intentionally us[ing] a social networking web site, instant messaging, or chat room service that allows a person who is less than eighteen years of age to access or use its social networking web site, instant messaging, or chat room service ….'" (*Id.* at p. 1094.) The statute defined the term "'[s]ocial networking web site'" as "'a web page or collection of web sites contained on the Internet (a) that enables users or subscribers to create, display, and maintain a profile or Internet domain containing biographical data, personal information, photos, or other types of media, (b) that can be searched, viewed, or accessed by other users or visitors to the web site, with or without the creator's permission, consent, invitation, or authorization, and (c) that may permit some form of communication, such as direct comment on the profile page, instant messaging, or email, between the creator of the profile and users who have viewed or accessed the creator's profile ….'" (*Id.* at p. 1095.)

The court held the statute was "so expansive and so vague that it chills offenders and their associates … from using those portions of the Internet that the defendants claim are open to them." (*Doe v. Nebraska*, *supra*, 898 F.Supp.2d at p. 1112.) The court

explained, "no one knows what a 'collection of web sites' is, and without that understanding, the whole of the Internet could be banned." (*Id*. at p. 1123.) However, while the court found the term "collection of web sites" used within the term "social networking web site" to be vague, it did not specifically find vague the term "social networking web site." (*Id.* at p. 1115.) Further, as in *Jindal*, the court in *Nebraska* considered constitutional challenges to several criminal statutes rather than a probation condition. (*Nebraska*, *supra*, at p. 1093.) Thus, *Nebraska* does not assist Cruz.

Cruz asserts the social networking website restriction must be interpreted in view of another probation condition imposed restricting him from accessing pornography. Among other conditions, the juvenile court imposed the following probation condition: "The minor shall not use, access, download, receive, view, copy or reproduce in any form any material known to the minor to be pornographic in nature nor associate or initiate contact with anyone known to the minor to be involved with or in possession of the same." In view of the pornography restriction, Cruz asserts a probation officer might erroneously interpret the social networking site restriction to ban him from accessing "'any' website that offers opportunities for social networking, such as … Linkedin, a Google+ page, or a blog with social networking features." According to Cruz, this raises a danger of arbitrary and discriminatory enforcement because the pornography restriction was intended only to inhibit his communication with persons interested in pornography. As such, "a police or probation officer might overlook [Cruz's] access to a site that offers social networking opportunities, but bears no obvious connection to the court's concern regarding pornography." Cruz's argument is unpersuasive. There is no evidence the condition banning him from accessing pornographic materials was intended to have any bearing on the social networking website restriction. Assuming, arguendo, the conditions are related, we see no reason why Cruz would be unable to communicate with persons interested in pornography through websites such as LinkedIn, Google+, or a blog with

social networking features. Thus, the court's restriction banning Cruz from "*any* social networking site" (italics added) is appropriate.

Cruz contends this case is similar to *In re Ana C.* (2016) 2 Cal.App.5th 333 (*Ana C.*), disapproved on other grounds by *People v. Hall* (2017) 2 Cal.5th 494, 503, footnote 2 (*Hall*). In *Ana C.*, the Court of Appeal examined a probation condition ordering the minor "'not [to] possess or utilize any program or application, on any electronic data storage device, that automatically or through a remote command deletes data from that device.'" (*Ana C.*, *supra*, at p. 350.) The Court of Appeal found the condition unconstitutionally vague "[b]ecause all computing devices are 'electronic data storage devices' and virtually all software programs available to consumers for those devices have the capability to 'automatically' delete data—which is the purpose of the 'delete' key … and the 'delete' command …—the Data Deletion Tools Ban, plainly read, bans Minor from using or possessing any smartphone or computer." (*Id.* at pp. 350-351.) Because it was unclear whether the Data Deletion Tools Ban was designed to prevent the minor from using applications destroying all evidence that a communication has occurred, such as Snapchat, or to prevent the minor from using devices having remote erase capability, such as an iPhone, the Court of Appeal struck the condition and invited modification on remand. (*Id.* at p. 351.)

Here, unlike *Ana C.*, what is prohibited under the social networking website restriction may be ascertained by reference to other sources. We need not speculate as to what conduct the juvenile court intended to prohibit because the condition is sufficiently specific: Cruz is prohibited from using, accessing, viewing, or participating in *any* social networking websites. We therefore conclude the social networking website restriction is sufficiently specific so as to give him fair warning of the nature of the websites he is prohibited from, and to permit the juvenile court to determine whether the condition has been violated. (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

b. The Knowledge Requirement Is Implied

Cruz further contends the probation condition is unconstitutionally vague because the condition lacks a scienter requirement. Because Cruz could enter a social networking site inadvertently by clicking on a link taking him to such a website, he asserts the condition must be modified to read that he must not *knowingly* use, access, view, or participate in any social networking websites. We conclude modification of the condition is unnecessary.

In *Hall*, *supra*, 2 Cal.5th 494, our Supreme Court considered whether a probation condition prohibiting the possession of firearms, illegal drugs, and other contraband must be modified to include an express requirement of *knowing* possession of the prohibited items. The court explained, "[r]evocation of probation typically requires proof that the probation violation was willful." (*Id.* at p. 498.) The court further explained that in the context of conditions barring the possession of contraband, revocation requires knowledge. (*Id*. at p. 499.) The *Hall* court noted that criminal statutes prohibiting the possession of contraband are generally construed to contain an implicit knowledge requirement even where the statute is silent. (*Id.* at p. 501.) According to the court, this reasoning applies to probation conditions: "Just as most criminal statutes—in all their variety—are generally presumed to include some form of mens rea despite their failure to articulate it expressly, so too are probation conditions generally presumed to require some form of willfulness, unless excluded '"'expressly or by necessary implication.'"'" (*Id*. at p. 502, quoting *In re Jorge M*. (2000) 23 Cal.4th 866, 872.) As such, the court held no express requirement was necessary. (*Id*. at p. 503.)

Although the probation condition here is different from the possessory condition at issue in *Hall*, we are guided by the court's reasoning. As to the condition banning Cruz from using, accessing, viewing, or participating in any social networking websites, we conclude modification of the condition to include an express knowledge requirement is unnecessary. The requirement that Cruz must knowingly use, access, view, or participate in such a website is implicit in the condition.

B. The Social Networking Site Ban Is Not Impermissibly Overbroad

Cruz further contends the probation condition is unconstitutionally overbroad because it bars him from significant forums of association and expression, and the nature of his offense does not justify significant curtailment of his access to the Internet. We conclude Cruz's claim is without merit.

1. Forfeiture

The Attorney General contends Cruz forfeited his overbreadth claim because he failed to lodge a timely objection below, and because Cruz's claim requires reference to the sentencing record. Cruz directs us to multiple cases wherein the appellants raised overbreadth arguments for the first time on appeal. (*People v. Martinez* (2014) 226 Cal.App.4th 759, 765-766 [reaching defendant's argument that probation condition was unduly overbroad without discussion of whether defendant's argument relied on facts in sentencing record]; *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1347 [defendant's failure to object to a probation condition did not forfeit overbreadth argument on appeal because the argument presented pure question of law]; *In re E.O.* (2010) 188 Cal.App.4th 1149, 1153, fn. 1 [same]; *In re Kacy S.* (1998) 68 Cal.App.4th 704, 712-713 [reviewing overbreadth claim made for first time on appeal because condition represented a "sweeping limitation" on minor's liberty]; *In re Justin S.* (2001) 93 Cal.App.4th 811, 815 [concluding appellant was not foreclosed from raising constitutional claims on appeal since they presented "'pure questions of law that [could] be resolved without reference to the particular sentencing record'"].) Although Cruz marshals facts from the sentencing record to support his argument, we will nonetheless address his claim to explain why it lacks merit.

2. Specificity

"A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad." (*Sheena K., supra,* 40 Cal.4th at p. 890.) "The essential question in an overbreadth challenge is the closeness of the fit between the

legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement." (*In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153.)

Cruz contends the social networking website restriction is overbroad. We find *In re Victor L.*, *supra*, 182 Cal.App.4th 902 instructive. There, the minor was convicted of possession of a dangerous weapon. (*Id*. at p. 908.) The juvenile court imposed the following Internet restrictions pursuant to the minor's probation conditions: (1) the minor "'shall not access or participate in any Social Networking Site, including but not limited to Myspace.com'"; (2) the minor shall "'not use, possess or have access to a computer which is attached to a modem or telephonic device'"; and (3) the minor "'shall not be on the Internet without school or parental supervision.'" (*Id*. at p. 909.) Although the Court of Appeal noted inconsistencies between the conditions, the first and third conditions were upheld. (*Id*. at pp. 925, 927.) The conditions, aimed at reducing the minor's temptation and ability to communicate with gang members, imposed a minimal burden on his constitutional rights. (*Id*. at p. 926.)

Here, as in *Victor L.*, any limitation of Cruz's constitutional rights is closely tailored to the purpose of the condition. By limiting Cruz's access to social networking websites, the condition serves at least two conceivable purposes: it impedes Cruz's ability to anonymously target other victims, and it reduces his temptation and ability to communicate with individuals the probation officer referred to as "criminal associates," a risk factor to his recidivism, or individuals who may cause him to violate his probation. Contrary to Cruz's assertions, the juvenile court was not required to find he was a gang member (*In re Victor L.*, *supra*, 182 Cal.App.4th 902) or a collector of child pornography (*People v. Pirali*, *supra*, 217 Cal.App.4th 1341) to impose the social networking website restriction.

Cruz further claims the restriction improperly bars him from significant forums of association and expression. While social networking websites are significant forums of association and expression, the restriction here stands in stark contrast to a blanket prohibition restricting him from accessing the Internet altogether. (*In re Victor L.*, *supra*, 182 Cal.App.4th at p. 925 [courts "tend[] to reject complete Internet bans except in the most aggravated cases, unless they contain a clause allowing Internet access with prior approval of the supervising authority"].) Moreover, we do not read the social networking website restriction to prohibit Cruz from using text messaging or e-mail, provided he does not use those applications to communicate with individuals he is prohibited from contacting under the terms of his probation. In our view, the social networking restriction imposed is minimally burdensome.

Cruz urges this court to follow *In re Stevens* (2004) 119 Cal.App.4th 1228 and find there are "more focused prohibitions" available that would serve the same goals of supervision and public safety. He does not suggest what more focused prohibitions or restrictions might include, nor does *Stevens* provide us with meaningful guidance on this issue.

In *Stevens*, an adult parolee objected to a parole condition prohibiting the use of his computer and Internet access. (*In re Stevens*, *supra*, 119 Cal.App.4th at p. 1231.) The parolee's commitment offense, child molestation, had not involved computer use, however, the Board of Prison Terms (BPT) imposed the condition based on the concern that a child molester's unfettered computer and Internet access might result in future criminal conduct. (*Id*. at pp. 1231, 1239.) The BPT subsequently modified the condition to allow the parolee limited use of the Internet, restricting him from pornographic websites and communicating with minors. (*Id*. at p. 1232.) Because the condition was modified, the Court of Appeal denied the parolee's habeas petition as moot. (*Id*. at p. 1240.) *Stevens* does not suggest the social networking website condition here could or should be more narrowly drawn.

C. The Social Networking Site Ban Is Reasonable Under *Lent*

1. Forfeiture

Finally, Cruz contends the probation condition is invalid because it is not reasonably related to the deterrence of future criminality. Cruz concedes no objection to the probation condition was raised on this basis in the juvenile court. However, he asserts this court is not foreclosed from reviewing his claim because his counsel rendered ineffective assistance of counsel for failing to lodge a timely objection.

We conclude Cruz has forfeited his claim on appeal. Our analysis of Cruz's claim necessarily requires reference to Cruz's probation report and sentencing record. (*In re J.E.* (2016) 1 Cal.App.5th 795, 802 ["[W]hether a probation condition is reasonably related to a specific minor's future criminality is necessarily intertwined with the facts and circumstances surrounding the minor in question"].) Nonetheless, because Cruz raises an ineffective assistance of counsel claim, we will address his claim. We conclude Cruz has failed to show his "defense counsel's performance fell below an objective standard of reasonableness under prevailing professional norms" for failing to object to the probation condition. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.)

2. Analysis

Courts have broad discretion in setting conditions of probation in order to "'foster rehabilitation and to protect public safety pursuant to … section 1203.1.'" (*People v. Lopez, supra,* 66 Cal.App.4th at p. 624, quoting *People v. Carbajal* (1995) 10 Cal.4th 1114, 1120; see § 1203.1, subd. (j).) However, the court's discretion is not boundless. Under *People v. Lent* (1975) 15 Cal.3d 481, 486, a probation condition is "invalid [if] it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to [the deterrence of] future criminality.'" "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term." (*People v. Olguin, supra,* 45 Cal.4th at p. 379.)

The Attorney General concedes the first two elements are met. The use of social networking websites was not involved in the commission of the instant offense, nor is the use of such websites in itself a criminal offense. The thrust of the issue here is whether the probation condition is reasonably related to the deterrence of future criminality. We conclude that it is.

According to Cruz, this condition was likely intended to prevent him from accessing websites where he might encounter, influence, or be influenced by others with sexual proclivities similar to his own. The Attorney General posits the condition was intended to prevent Cruz from using a fake social media profile to target other victims and to disseminate nude photographs of other victims. (RB 9, 20)! Both objectives arguably support imposition of the probation condition.[2]

In *People v. Navarro* (2016) 244 Cal.App.4th 1294, the defendant pleaded guilty to attempted kidnapping of a 13-year-old girl. (*Id.* at p. 1296.) Among other conditions, the court imposed an Internet restriction which, in part, banned the defendant from using "any Internet-based communication where [he may post] content to the Internet, such as instant messaging or social media." (*Id.* at p. 1301.) Although other wording within the restriction rendered the condition vague, the court rejected the defendant's contention the prohibition was unreasonable. (*Id*. at pp. 1300, 1302.) The court explained that while the condition was not related to the crime itself, it was reasonably related to preventing future criminality because it sought to deter the defendant from using certain technology to prey on young victims. (*Id*. at p. 1300.)

Here, as in *Navarro*, the social networking website restriction is related to deterring future criminality. Although Cruz did not commit the instant offense using social networking websites, the fact that he used a spoofing application to make his text messages appear to come from an unknown number demonstrated his aptitude with

[2]Because Cruz declined to challenge the condition in the juvenile court below, the court's purpose in imposing the condition is unclear.

technology. While Cruz is not prohibited from sending text messages or e-mails, and could presumably reoffend by downloading a similar texting application, the probation condition will impede his ability to anonymously target other victims, particularly individuals who are unknown to him. Further, the probation condition reduces his temptation and ability to contact individuals who might cause him to violate his probation. We therefore conclude the social networking website restriction is reasonable under *Lent*.

DISPOSITION

The order is affirmed.